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No. 90-174

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

ANNE DUFFY POKORNY, Administratrix of the Estate of John Duffy, Deceased,
Petitioner,

v.

FORD MOTOR COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should review an interlocutory decision of the United States Court of Appeals for the Third Circuit that, consistent with decisions by three other federal courts of appeals and two state appellate courts that this Court has declined to review within the past two years, narrowly holds that federal law preempts state tort law claims which assert that motor vehicles not equipped with airbags or automatic seat belts are for that reason defective.

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RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

A. Petitioner's Claim

Petitioner's deceased, Officer Michael Duffy, was the right-front passenger in a 1981 Ford Econoline police van that collided with another vehicle, was knocked over onto its side, and crushed Officer Duffy when he was partially ejected through the passenger side window. Officer Duffy was not wearing the lap/shoulder safety belt provided in the van.

Petitioner Pokorny brought this product liability action against Ford Motor Company, alleging that the police van was defective because it was equipped with manual lap/shoulder seat belts, rather than with some form of passive restraint, such a airbags, automatic seat belts, or window netting.

B. The National Traffic and Motor Vehicle Safety Act

In 1966 Congress enacted the National Traffic and Motor Vehicle Safety Act, which required the Secretary of Transportation to prescribe Federal Motor Vehicle Safety Standards ("Safety Standards") that "meet the need for motor vehicle safety." 15 U.S.C. § 1392(a). Safety Standards protect the public "against unreasonable risk of accidents occurring as a result of the design, construction or performance of motor vehicles and . . . unreasonable risk of death or injury to persons in the event accidents do occur." 15 U.S.C. § 1391(1).

To ensure that, when the Department of Transportation decides that a federal Safety Standard should govern a particular motor vehicle feature, it will not be undermined by the enforcement of a hodgepodge of state standards addressing the same feature, Congress preempted conflicting state standards by stating:

> Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment, any safety standard applicable to the same aspect of performance of such vehicle or item of equipment, which is not identical to the Federal standard. . . .

15 U.S.C. § 1392(d).

Explaining the need for preemption, the Senate Report emphasized that

> [t]he centralized, mass production, high volume character of the motor vehicle manufacturing industry in the United States requires that motor vehicle safety standards be not only strong and adequately enforced, but that they be uniform throughout the country.

S. Rep. No. 1301, 89th Cong., 2d Sess. 12, *reprinted in* 1966 U.S. Code Cong. & Admin. News 2709, 2720. The House Report similarly stated that

> this preemption subsection is intended to result in uniformity of standards so that the public as well as industry will be guided by one set of criteria rather than by a multiplicity of diverse standards.

H.R. Rep. No. 1776, 89th Cong., 2d Sess. 17 (1966).

C. Federal Regulation of Passive Restraints

For 23 years, pursuant to the Safety Act, the United States Government has pervasively regulated the occupant-restraint systems in vehicles sold in this country. In 1967 the National Highway Traffic Safety Administration of the Department of Transportation adopted Safety Standard 208, requiring the installation of seat belts in all automobiles sold in this country. 32 Fed. Reg. 2408, 2415 (Feb. 3, 1967).

In 1969 the Department of Transportation began to address "passive" occupant-restraint systems—systems that might restrain vehicle occupants automatically. *See* 34 Fed. Reg. 11148 (July 2, 1969). Two devices received the greatest attention: airbags and seat belts that automatically move into place around the occupants as the vehicle doors are closed.

On November 3, 1970, the Department amended Safety Standard 208 to establish testing requirements that would have to be met by some form of passive restraints in cars manufactured in and after the 1974 model year. *See* 35 Fed. Reg. 16927 (Nov. 3, 1970). In 1972 the Department further amended the Safety Standard to provide that cars built before the 1976 model year could have *either* passive restraints *or* manual lap/shoulder belts coupled with an ignition interlock that would prevent starting the vehicle if the belts were not connected. 37 Fed. Reg. 3911 (Feb. 24, 1972).

In 1974 Congress expressly prohibited the Department from requiring any nonbelt restraint system unless the Secretary first (a) followed special hearing procedures

and (b) provided both houses of Congress an opportunity to review the proposed requirements. 15 U.S.C. § 1410b (b)-(d). The statute's purpose was to ensure that only seat belts, and not airbags or interlocks, would be "require[d] of the automobile industry and of the purchasing public . . . ." 120 Cong. Rec. 27815, 27816 (1974). *See also* 120 Cong. Rec. at 27822, 35637.

In 1976, after additional interim rulemaking, Secretary of Transportation William Coleman concluded that passive restraints still should not be required and that manual lap/shoulder belts should be authorized for at least several more years. He also arranged for a multi-year test in which a demonstration fleet of 500,000 vehicles would be equipped with passive restraints beginning in 1979. In explaining his conclusion that passive restraints should not be required until after such a major fleet test had provided real-world data, Secretary Coleman stated:

> Every sampling of public opinion which has been brought to my attention, including the analysis of the docket for the public hearing, indicates that a substantial majority of Americans oppose the Federal government's mandating passive restraints.
>
> * * * *
>
> There is widespread and serious concern among members of the public with respect to the likelihood and consequences of inadvertent air bag deployment, the possibility that air bags may cause or exacerbate injuries, and the question of whether air bags will deploy properly in situations in which they are needed.

"The Secretary's Decision Concerning Motor Vehicle Occupant Crash Protection," D.O.T., at 11-12 (Dec. 6, 1976). *See* 42 Fed. Reg. 5071 (Jan. 27, 1977). Secretary Coleman also stated:

> A decision to mandate passive restraints would be unique and of unprecedented magnitude in the history of Federal involvement in motor vehicle safety.

> It would involve replacing seat belts[,] which are effective when used[,] with systems which have operating characteristics unlike any other safety equipment now in automobiles and with which many people are totally unfamiliar. It would mean mandating a particular form of self-protection which (in the case of the air bag) is among the most costly safety devices ever Federally required.

"The Secretary's Decision Concerning Motor Vehicle Occupant Crash Protection," D.O.T., at 32.

Secretary Coleman observed that a rule requiring passive restraints would be unfair to automobile owners who use their seat belts, because they would have to pay more for cars with passive restraints, yet would obtain no greater protection. In short, "those who currently wear seat belts would be forced to subsidize those who do not." 41 Fed. Reg. 24070, 24071 (June 14, 1976).

Secretary Coleman concluded that an immediate passive-restraint requirement might provoke "widespread negative public reaction" and lead to a repeal of the standard by Congress "after the manufacturers had retooled their production facilities." Such a result "would have disastrous economic consequences for the entire nation." "The Secretary's Decision Concerning Motor Vehicle Occupant Crash Protection," D.O.T., at 11.

In 1977, following additional hearings, Secretary Coleman's successor, Brock Adams, reaffirmed that passive restraints should not be required in any vehicle before the 1982 model year, 42 Fed. Reg. 34290, 34296 (July 5, 1977), and should not be required in multi-purpose vehicles like police vans until an unspecified time after that. *Id.*. Thus, the federal statutes and regulations that governed the 1981 Econoline police van expressly permitted manufacturers to use manual safety belts of the type installed in the vehicle, rather than airbags or other passive restraints.

In July 1984, after further rulemaking and judicial review, Secretary of Transportation Elizabeth Dole promulgated the version of Safety Standard 208 that is still in force today. The rule explicitly authorizes manufacturers to use manual lap/shoulder safety belts, such as those installed in the front seats of the 1981 Ford Econoline van, in all vehicles made before the 1987 model year. 49 Fed. Reg. 28962, 29009-10 (July 17, 1984). It also provided that passive restraints would be phased into passenger cars during the 1987 through 1990 model years, but continued to provide manufacturers the option of using manual seat belts in multi-purpose vehicles, such as police vans, during and after the phase-in period. *Id.* In explaining the bases for this carefully constructed, complex regulatory program, Secretary Dole emphasized federal safety purposes and policies that paralleled those articulated by her predecessors. *See* 49 Fed. Reg. at 28985, 28992, 28997, 29001.

It is against this background—expressly articulated federal safety policies that would be undermined by a passive restraint requirement for vehicles made in 1981, and thorough nationwide regulation of restraint systems —that Petitioner now seeks to impose such a requirement on more than 100 million vehicles made by more than two dozen manufacturers since the beginning of the 1981 model year.

SUMMARY OF ARGUMENT

The interlocutory ruling below does not conflict with a decision of any United States Court of Appeals or of any state court of last resort. Consistent with the decisions by all three of the other United States Courts of Appeals that have ruled on this issue, the United States Court of Appeals for the Third Circuit narrowly held that federal law preempts Petitioner's claim that, under state tort law, 1981 police vans equipped with manual seat belts rather than airbags or automatic seat belts are defective. Exactly like those other courts of appeals, the Third

Circuit held that enforcement of such a state law standard was not expressly preempted, but would frustrate the policies and purposes of Congress and the Department of Transportation and was therefore impliedly preempted.

Just four months ago, this Court denied petitions for writs of certiorari in those three other cases. *Taylor v. General Motors Corp.*, 875 F.2d 816 (11th Cir. 1989), *cert. denied*, —— U.S. ——, 110 S. Ct. 1781 (1990); *Kitts v. General Motors Corp.*, 875 F.2d 787 (10th Cir. 1989), *cert. denied* —— U.S. ——, 110 S. Ct. 1781 (1990); *Wood v. General Motors Corp.*, 865 F.2d 395 (1st Cir. 1988), *cert. denied*, —— U.S. ——, 110 S. Ct. 1781 (1990). At the same time, this Court also denied a petition for a writ of certiorari in a case in which the California Court of Appeal likewise had held that federal law impliedly preempts state tort law claims based on the absence of airbags or automatic seat belts. *Nissan Motor Corp. v. Superior Court*, 212 Cal. App. 3d 980, 261 Cal. Rptr. 80 (1989), *cert. denied*, 110 S. Ct. 1782 (1990). *Accord Wickstrom v. Maplewood Toyota, Inc.*, 416 N.W.2d 838 (Minn. App. 1987), *cert. denied*, 487 U.S. 1236 (1988); *Gardner v. Honda Motor Co.*, 145 A.D.2d 41, 536 N.Y.S.2d 303 (N.Y. App. Div. 1988), *appeal dismissed*, 74 N.Y.2d 715, 543 N.Y.S.2d 401 (1989).

The Third Circuit's opinion in this case thus adds to the weight of authority provided by *Wood*, *Kitts*, *Taylor*, *Nissan*, *Wickstrom*, and *Gardner*, and further shows that this Court correctly judged that review of those rulings was unnecessary to secure uniformity of decision on the narrow question involved. Petitioner has identified no new development that suggests that such review is now needed.

Review is further unwarranted because the decision below is interlocutory. The court of appeals held that

one of Petitioner's claims was not preempted, and remanded for further proceedings. If Petitioner were to prevail on that claim, the issues presented in the petition now before this Court would be mooted.

Finally, as the United States observed when recommending that the petition for a writ of certiorari be denied in *Wood*, the federal regulation governing restraint systems "requires that all passenger cars manufactured after September 1, 1989, have passive protection systems." Brief for United States as Amicus Curiae at 19, *Wood v. General Motors Corp.*, 110 S. Ct. 1781 (1990) (No. 89-46). Therefore, unless a conflict develops among the federal courts of appeals or the state courts of last resort, the issues presented by Petitioner will be of diminishing importance.

REASONS FOR DENIAL OF THE PETITION

I. THE THIRD CIRCUIT'S DECISION DOES NOT CONFLICT WITH THE HOLDING OF ANY OTHER CIRCUIT OR OF ANY STATE COURT OF LAST RESORT

Every United States Court of Appeals that has considered the issue has ruled that federal law preempts state tort law claims that motor vehicles equipped with manual seat belts, rather than airbags or automatic seat belts, are defective. Specifically, the First, Third, Tenth, and Eleventh Circuits have held such claims impliedly preempted by the National Traffic and Motor Vehicle Safety Act of 1966 and its implementing regulation governing occupant restraint systems, Safety Standard 208. *See Taylor v. General Motors Corp.*, 875 F.2d 816 (11th Cir. 1989), *cert. denied*, —— U.S. ——, 110 S. Ct. 1781 (1990); *Kitts v. General Motors Corp.*, 875 F.2d 787 (10th Cir. 1989), *cert. denied*, —— U.S. ——, 110 S. Ct. 1781 (1990); *Wood v. General Motors Corp.*, 865 F.2d 395 (1st Cir. 1988), *cert. denied*, —— U.S. ——, 110 S. Ct. 1781 (1990).

Three state intermediate appellate courts also have held such claims preempted by federal law. *Nissan Motor Corp. v. Superior Court*, 212 Cal. App. 3d 980, 261 Cal. Rptr. 80 (1989), *cert. denied*, 110 S. Ct. 1782 (1990); *Wickstrom v. Maplewood Toyota, Inc.*, 416 N.W.2d 838 (Minn. App. 1987), *cert. denied*, 476 U.S. 1236 (1988); *Gardner v. Honda Motor Co.*, 145 A.D.2d 41, 536 N.Y.S.2d 303 (N.Y. App. Div. 1988), *appeal dismissed*, 74 N.Y.2d 715, 543 N.Y.S.2d 401 (1989). Only one state intermediate appellate court has disagreed, and a petition for review of that aberrational decision is now before the Pennsylvania Supreme Court. *Gingold v. Audi-NSU-Auto Union, A.G.*, 389 Pa. Super. 328, 567 A.2d 312 (1989), appeal filed. No state court of last resort has addressed the issue. Thus, as the United States observed in opposing the petition for a writ of certiorari in one of the cases in which a "no-airbag" claim was held preempted, "Although numerous federal and state courts have considered the preemption question, there is no conflict among the federal circuits or the state courts of last resort." Brief for the United States as Amicus Curiae at 7, *Wood v. General Motors Corp.*, 110 S. Ct. 1781 (1990) (No. 89-46).

Nevertheless, Petitioner contends that courts have "diverged widely" on this issue, and cites four federal appellate cases that she contends have "directly or indirectly held that state common law claims for lack of passive passenger restraints are not preempted and indeed have found that Section 1397(k) of the Safety Act expressly preserves these claims." (Petition at 7.) In truth, however, none of the four cases involved either airbags or automatic seat belts, none discussed the narrow preemption issue addressed here by the Third Circuit,[1]

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[1] The Third Circuit held that the broad doctrines of express preemption and preemption of the field do not apply. Petitioner's "no-airbag" claim was held preempted only because of its conflict with the applicable federal laws.

and the word preemption does not even appear in the opinions in three of those four cases.[2] In none of those cases, therefore, did the holding diverge from the holdings of the four United States Courts of Appeals that, as discussed above, considered "no-airbag" claims and found them preempted on narrow grounds peculiar to the regulation and regulatory history involved here.

Petitioner also cites a single district court case, *Murphy v. Nissan Motor Corp.*, 650 F. Supp. 922 (E.D.N.Y. 1987), in which a passive restraint claim was held not preempted. But that case was decided before all of the appellate decisions holding such claims preempted, and before this Court's decision in *International Paper Co. v. Ouellette*, 479 U.S. 481 (1987), which undermined every point relied on by the district court in *Murphy*. That district court decision is also contrary to decisions by more than 25 United States District Courts throughout the country that have held such claims to be preempted.[3]

Petitioner also erroneously contends that "there is utter disagreement" in the reasoning of the many courts that have found preemption of "no-airbag" claims. (Petion at 8.) In truth, however, all of those courts have agreed on the fundamental facts and principles that re-

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[2] *Shipp v. General Motors Corp.*, 750 F.2d 418 (5th Cir. 1985); *Dreisonstok v. Volkswagenwerk A.G.*, 489 F.2d 1066 (4th Cir. 1974); *Larsen v. General Motors Corp.*, 391 F.2d 495 (8th Cir. 1968).

[3] *See, e.g., Dallas v. General Motors Corp.*, 725 F. Supp. 902 (W.D. Tex. 1989); *Surles v. Ford Motor Co.*, 709 F. Supp. 732 (N.D. Tex. 1988); *Kelly v. General Motors Corp.*, 705 F. Supp. 303 (W.D. La. 1988); *Kolbeck v. General Motors Corp.*, 702 F. Supp. 532 (E.D. Pa. 1988); *Staggs v. Chrysler Corp.*, 678 F. Supp. 270 (N.D. Ga. 1987); *Hughes v. Ford Motor Co.*, 677 F. Supp. 76 (D. Conn. 1987); *Wattelet v. Toyota Motor Co.*, 676 F. Supp. 1039 (D. Mont. 1987); *Schick v. Crysler Corp.*, 675 F. Supp. 1183 (D.S.D. 1987); *Baird v. General Motors Corp.*, 654 F. Supp. 28 (N.D. Ohio 1986); *Cox v. Baltimore County*, 646 F. Supp. 761 (D. Md. 1986); *Vanover v. Ford Motor Co.*, 632 F. Supp. 1095 (E.D. Mo. 1986).

quire preemption of such claims. Each of those courts found that the Federal Government had explicitly authorized the installation of either manual safety belts or passive restraints. *See, e.g., Taylor*, 875 F.2d at 827. Each of those courts found that an essential safety purpose underlying Safety Standard 208 is to allow a choice among restraint options. *See, e.g., Pokorny v. Ford Motor Co.*, 902 F.2d 1116, 1124 (3rd Cir. 1990), *petition for cert. filed*, 59 U.S.L.W. 3073 (U.S. July 27, 1990) (No. 90-174); *Taylor*, 875 F.2d at 827; *Wood*, 865 F.2d at 408. Each of those courts agreed that common law liability for lack of passive restraints would create a state standard. *See, e.g., Pokorny*, 902 F.2d at 1125; *Taylor*, 875 F.2d at 826; *Wood*, 865 F.2d at 410. Each of those courts found that the state standard asserted by the plaintiff would stand as an obstacle to the full accomplishment and execution of the federal purposes articulated by Congress and the Department of Transportation. *See, e.g., Pokorny*, 902 F.2d at 1123; *Taylor*, 875 F.2d at 827; *Wood*, 865 F.2d at 408. Each of those courts found that the Safety Act's general savings clause does not prevent the narrow preemption that governs here. *See, e.g., Pokorny*, 902 F.2d at 1125; *Taylor*, 875 F.2d at 827 n.20; *Wood*, 865 F.2d at 414-16. And, as a result, each of those courts held the "no-airbag" claim impliedly preempted.

In sum, the holdings and the core reasoning of the four United States Courts of Appeals that have addressed "no-airbag" claims are consistent, not in conflict. The Third Circuit captured both the holding and the essence of the reasoning of all of those courts by stating in its opinion below:

> Because common law liability for failing to provide passenger-side airbags or automatic seat belts would undermine the option of meeting federal safety standards by providing a manual seat belt system like that in the Ford van in which Duffy was killed, an option that Congress and the Department of

> Transportation clearly intended to preserve, Pokorny's action is preempted to the extent that it is based on this theory of recovery.

Pokorny, 902 F.2d at 1125.

II. THE COURT OF APPEALS RIGOROUSLY APPLIED AND CAREFULLY FOLLOWED THE PREEMPTION PRINCIPLES ESTABLISHED BY THIS COURT

Petitioner contends that a writ of certiorari should be granted because there is no conflict between her asserted "no-airbag" claim and the Safety Act's purpose of promoting motor vehicle safety, because the Safety Act's savings clause in any event precludes preemption of a state tort law claim of any kind under any circumstances, and because the court of appeals therefore erred in finding implied preemption. (Petition at 14-20.) That contention misapprehends in every respect the preemption principles established by this Court and carefully applied by the court of appeals.

A. The Court of Appeals Correctly Followed Well-Established Law in Ruling That Petitioner's "No-Airbag" Claim Conflicts with the Purposes and Policies of Safety Standard 208

Petitioner correctly asserts that the stated purpose of the Safety Act "is to reduce traffic accidents and deaths and injuries to persons resulting from traffic accidents." (Petition at 15, quoting 15 U.S.C. § 1381.) The court of appeals expressly relied on that same statutory language in its analysis. *Pokorny*, 902 F.2d at 1122. Petitioner also correctly asserts that this Court's decisions require that, where a federal regulatory system preserves a role for the states, as the Safety Act does in its savings clause, "conflict preemption analysis must be applied sensitively . . . to prevent the diminution of the role Congress reserved to the states while at the same time preserving the federal role." (Petition at 15, quoting *Northwest*

Central Pipeline Corp. v. State Corp. Comm'n, 489 U.S. 493, ——, 109 S. Ct. 1262, 1276 (1989).) The court of appeals quoted and applied the identical language of this Court. *Pokorny*, 902 F.2d at 1123.

What Petitioner fails to recognize, however, and what the court below correctly applied, is the additional pre-emption principle that

> it is not enough to say that the ultimate goal of both federal and state law is [the same]. *A state law also is preempted if it interferes with the methods by which the federal statute was designed to reach this goal.*

International Paper Co. v. Ouellette, 479 U.S. 481, 494 (1987) (emphasis added). This is but a corollary of the broader rule that implied preemption exists whenever a state law "stands as an obstacle to the accomplishment of the full purposes and objectives of Congress." *Lawrence County v. Lead-Deadwood School Dist.*, 469 U.S. 256, 260 (1985).

The court of appeals expressly found, and Petitioner does not dispute, that allowing her "to assert that the Ford van was defectively designed because it did not contain airbags or automatic seatbelts frustrates the goals of the federal regulatory framework and undermines the flexibility that Congress and the Department of Transportation intended to give to automobile manufacturers in this area." *Pokorny*, 902 F.2d at 1123. The court futher explained that this flexibility to choose manual seat belts instead of airbags or automatic seat belts "is an essential element of the regulatory framework" and that the flexibility "was needed to 'provide sufficient latitude for industry to develop the most effective [occupant restraint] systems' and to help 'overcome any concerns about public acceptability by permitting some public choice.'" 902 F.2d at 1124, quoting 49 Fed. Reg. 28962, 28997 (1984).

Because the state law tort standard advocated by Petitioner would undermine these federal safety purposes and policies by reducing the flexibility that federal law provided, the court of appeals held that preemption exists. In doing so, the court hewed to this Court's admonition that "a state common law rule cannot take away the flexibility provided by a federal regulation, and cannot prohibit the exercise of a federally granted option." 902 F.2d at 1125, applying *Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 155 (1982). *Accord Lawrence County v. Lead-Deadwood School District*, 469 U.S. 256, 262 (1985).

The state tort law standard advocated by Petitioner thus conflicts with the purposes and policies of the applicable federal law. The Third Circuit was correct in joining the First, Tenth, and Eleventh Circuits in so holding, and review by this Court is not warranted.

B. The Court of Appeals Correctly Followed Well-Established Law in Ruling That the Safety Act's General Savings Clause Does Not Preclude Narrow Conflict Preemption

The Third Circuit narrowly held that "it is well-established that a savings clause like section 1397(k) does not save common law actions that would subvert a federal statutory or regulatory scheme." *Pokorny*, 902 F.2d at 1125. Petitioner asserts that, because the Safety Act contains a general savings clause, it is error to allow a common law claim of any kind, under any circumstances, to be preempted. (Petition at 18-20.)

This Court, however, in decisions cited by the court of appeals below, has repeatedly rejected Petitioner's sweeping interpretation of general savings clauses. *See International Paper Co. v. Ouellette*, 479 U.S. at 492-94; *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 328-31 (1981); *Pennsylvania R.R. v. Puritan Coal Mining Co.*, 237 U.S. 121, 129 (1915); *Texas &*

Pac. Ry. v. Abilene Cotton Oil Co., 204 U.S. 426, 446 (1907). As this Court has explained, such savings clauses do not permit states to create causes of action, either common law or statutory, that would conflict with federal regulatory purposes and policies. Rather, such savings clause are included only because, without them,

> it might have been claimed that, Congress having entered the field, the whole subject of liability . . . had been withdrawn from the state courts, so [the savings clause] was added to make plain that the Act was not intended to deprive the state courts of their general and concurrent jurisdiction.

Kalo Brick, 450 U.S. at 328.

In *Abilene Cotton*, for example, the Court held that the Interstate Commerce Act precluded a common law action for damages for unjust and discriminatory rates, notwithstanding a broad savings clause that stated:

> Nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies.

204 U.S. at 446. Recognizing the tension between the broad savings language and the purposes of the federal regulatory scheme, the Court held that the savings clause "cannot in reason be construed as continuing . . . a common law right" inconsistent with the underlying federal aims. 204 U.S. at 446. *Accord Ouellette*, 479 U.S. at 492-94; *Kalo Brick*, 450 U.S. at 331; *T.I.M.E., Inc. v. United States*, 359 U.S. 464, 473-74 (1959).

If the savings clause in this case were as broadly construed as Petitioner would have it, any jury in any state could apply a standard that would require manufacturers to act in direct contravention of federal regulations promulgated to "meet the need for motor vehicle safety." 15 U.S.C. § 1392(a). Suppose, for example, that a plaintiff could sue a manufacturer under state tort law on the

theory that headrests mandated by federal safety regulations to prevent whiplash were defective because they partially obscured rear vision. Manufacturers would be faced with the choice of being prohibited by the Federal Government from selling vehicles *without* the federally required equipment, or being financially prohibited, by massive tort exposure, from selling vehicles *with* the federally required equipment.

Accordingly, section 1397(c) must be read in a manner that prevents a conflict between common law remedies and Federal Motor Vehicle Safety Standards. *See United States v. Campos-Serrano*, 404 U.S. 293, 298 (1971) ("If an absolutely literal reading of a statutory provision is irreconcilably at war with clear congressional purpose, a less literal construction must be considered."); *Lynch v. Overholser*, 369 U.S. 705, 710 (1962) ("The decisions of this Court have repeatedly warned against the dangers of an approach to statutory construction which confines itself to the bare words of a statute, . . . for literalness may strangle meaning."). *See generally* 2A C. Sands, *Sutherland on Statutory Construction* § 46.07 at 110 (4th ed. 1984).

The legislative history of the Safety Act further shows that the savings clause does not preserve *all* common law claims under *all* circumstances. The Senate Report on the Act states:

> Moreover, the Federal minimum safety standards *need not be* interpreted as restricting state common law standards of care. Compliance with such standards would thus *not necessarily* shield any person from product liability at common law.

S. Rep. No. 1301, 89th Cong., 2d Sess. 12, *reprinted in* 1966 U.S. Code Cong. & Admin. News 2709, 2720. Similarly, the bill's sponsor, Senator Magnuson, stated, "Compliance with Federal standards would not *necessarily* shield any person from broad liability at the common law." 112 Cong. Rec. at 14320 (June 24, 1966). In short,

compliance with a federal Safety Standard does not *necessarily* prevent application of a state standard, but it does so in instances in which the state standard would impede the federal purposes.

Thus, the court of appeals correctly followed, and Petitioner has totally ignored, this Court's long line of decisions holding that a general savings clause cannot preclude conflict preemption. There is nothing novel or improper in the construction given to the savings clause below, and review by this Court therefore is not warranted.

CONCLUSION

As the brief for the United States stated earlier this year, "[W]e believe that the Court should stay its hand and see whether a conflict on the preemption question hereafter develops among the federal courts of appeals or the state courts of last resort." Brief for the United States as Amicus Curiae at 19, *Wood v. General Motors Corp.*, 110 S. Ct. 1781 (1990) (No. 89-46). "At this point, we see no pressing need for the Court to consider this issue." *Id.* Because of the uniformity of decisions holding "no airbag" claims preempted, such lawsuits are not yet interfering with the policies and regulations of Congress and the Department of Transportation. Accordingly, Respondent Ford Motor Company respectfully requests this Court to deny the Petition.

Respectfully submitted,

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August 24, 1990

APPENDIX

APPENDIX

APPENDIX

RULE 29.1 LIST OF SUBSIDIARY COMPANIES

Ford Motor Company has no parent corporation. The following is a list of domestic and foreign companies in which Ford Motor Company owns a significant (not necessarily controlling) interest, but which are not wholly-owned by Ford:

United States of America

Airlease Ltd.
Aries Technology
AT&T Automotive Services, Inc.
AT&T Fleet Services
Autolatina America, Inc., (Del)
Beech Holdings
Capricorn Investors Ltd.
Carlex Glass Company
Carnegie Group Inc., (Del)
Ceradyne, Inc.
Cimflex Teknowledge Corporation, (Penn)
Dunlop Automotive Composites Inc., (Delaware)
Edelson Technology Partners II
Eveleth Taconite Company, (Minn)
Excel Industries, Inc.
Fairtel Associates
Gecars, Inc.
Humbolt Mining Company
Inference Corporation
Lincoln-Rowe Management, (Mich)
Metropolitan Realty Corporation
New River Castings Company
Park Ridge Corporation, (Del)
Penstone, Inc.
Renaissance Center Venture
Rouge Steel Company
Seating Systems Technology, Inc.

Software Productivity Consortium
T.G. Ford Assoc.
U.S. Equipment Income Fund I
U.S. Equipment Income Fund II
U.S. Equipment Income Fund III
The American Road Insurance Company, (Mich)
View Engineering, Inc.

Argentina

Autolatina Argentina S.A.
Autolatina Argentina S.A. de Ahorro Para Fines Determinados
Invercred Compania Financiere S.A.
Transax Sociedad Anonima, Comercial, Industrial, y Financiera
Volkswagen Inversiones S.A.
Volkswagen Sociedad Anonima de Ahorro Para Fines Determinados

Australia

Australian Road Credit Limited
Ford Aerospace of Australia Pty., Ltd.
Ford Credit Australia Limited
Ford Credit Australia Wholesale Limited
Ford Motor Company of Australia Limited
Ford New Holland Australia Limited
Ford Sales Company of Australia Limited
New Holland Holdings Pty., Limited

Austria

Ford Bank Aktiengesellschaft (Austria)
Ford Motor Company (Austria) K.G.

Belgium

Ford Credit N.V.
Ford Motor Company (Belgium) N.V.
Ford Tractor (Belgium) Limited

Brazil

Apolo—Administradora de Bens S/C Ltda.
Autolatina Distribuidora deTitulos e Valores Mobiliaros Ltda.
Autolatina Financiadora S.A.—Credito, Financiamento e Invest.
Autolatina Leasing S/A—Arrandamento Mercantil
Autolatina Previdencia Privada
Autolatina S.A.
Autolatina—Comercio, Negocios e Participacoes Ltda.
Consorcio Nacional Ford Ltda.
Consorcio Nacional Volkswagen Ltda.
Ford Brasil S.A.
Ford Distribuidora de Productos de Petroleo Ltda.
Inter-Locadora S/A
Sociedade Paulista de Aparelhos Domesticos "SPAD" Ltda.
Transglobal Corretagem de Seguros Ltda.
Volkswagen de Brasil S/A
Volkswagen Factoring—Fomento Comercial S/A

Canada

Conix Corporation, (Del.)
Ford Motor Company of Canada, Limited
Nascote Industries, Inc., (Del.)
Trans Canada Glass Ltd.

Denmark

Ford Motor Company A/S

England

A C Cars Limited
Aston Martin (RDP) Limited
Aston Martin Finance Limited
Aston Martin Lagonda Design Limited
Aston Martin Lagonda Group Limited
Astno Martin Lagonda Limited

Aston Martin Lagonda U.S.A., Inc.
Aston Martin Sales Limited
Auto Club International Limited
Automotive Finance Limited
Dunlop Automotive Composites (UK) Limited
Iveco Ford Truck Limited
Lagonda Properties Limited

Finland

Oy FORD AO

Germany

Ford Investitions-GmbH
Ford Versorgungs-Und Unterstutzungseinrichtung GmbH

Holland

Ford Nederland B.V.

India

Escorts Tractors Limited

Japan

Autorama, Inc.
Hokkai Ford Tractor Co., Ltd.
Japan Climate Systems Corporation
Mazda Motor Corporation

Korea

Kia Motors Corporation
Korean Automotive Products Corporation

Mexico

Fabrica de Tractores Agricolas S.A. de C.V.
Implementos Agricolas Mexicanos, S.A.
ACONA B.V.
Nemak S.A.
Vitroflex S.A.

New Zealand

Vehicle Assemblers New Zealand Ltd.

Norway

Ford Motor Norge A.S.
Ford New Holland A/S

Sweden

Ford Credit AB
Ford Motor Company Aktiebolag

Switzerland

Ford Credit S.A.

Taiwan

Ford Enterprise Company Taiwan, Ltd.
Ford Lio Ho Motor Co. Ltd.

Turkey

Otosan Otomobile Sanayii A.S.

Venezuela

FANATRACTO—Fabrica Nacional de Tractores y Montores S.A.

AMIM Holdings Sdn. Bhd.
Associated Motor Industries Malaysia SDN.BHD.
Ford Taiwan Services, Limited
Halla Climate Control Corporation
Oy Ford Credit Rahoitus
Transcon Insurance Limited

AUTOMOBILE DEALERSHIPS

Al Bennett Ford Sales of Flint, Inc.
Al Neyer Ford, Inc.
Alberts-Johnson Ford, Inc.
Albion Ford-Mercury, Inc.
Alpena Ford Lincoln-Mercury, Inc.
Altoona Ford, Inc.
Baranco Lincoln-Mercury, Inc.
Bear Country Ford Lincoln-Mercury, Inc.
Berea Ford, Inc.
Big Valley Ford Lincoln-Mercury, Inc.
Will Russell Ford, Inc.
Buffalo Ford-Mercury, Inc.
C&L Lincoln-Mercury, Inc.
Campus Ford, Inc.
Canal Ford Lincoln-Mercury, Inc.
Castle Rock Ford-Mercury, Inc.
Champion Ford of Scranton, Inc.
Champion Motors, Inc.
Clinton Ford Lincoln-Mercury, Inc.
Coastal Ford, Inc.
Columbus Ford-Mercury, Inc.
Community Ford-Mercury, Inc.
Cornelia Ford Lincoln-Mercury, Inc.
Courtesy Ford Lincoln-Mercury Sales, Inc.
Courtesy Ford Lincoln-Mercury, Inc.
Cranberry Lincoln-Mercury, Inc.
Crossroads Ford-Mercury, Inc.
Crossroads Ford, Inc.
Crown Lincoln-Mercury, Inc.
Delta Ford Sales, Inc.
Duryea Ford, Inc.
Dyersburg Ford Lincoln-Mercury, Inc.
Economy Ford, Inc.
Edgar Ford, Inc.
Elkins Fordland, Inc.
Empire Ford, Inc.

Fairway Ford of Augusta, Inc.
Farmington Ford-Mercury, Inc.
Fort Valley Ford, Inc.
Freedom Ford Sales, Inc.
Friendship Ford, Inc.
Ft. Walton Beach Lincoln-Mercury, Inc.
Gold Star Ford Lincoln-Mercury, Inc.
Greater Cleveland Ford Mercury, Inc.
Green River Ford-Mercury, Inc.
Greenville Ford-Mercury, Inc.
Harbor Lincoln-Mercury, Inc.
Heritage Ford-Mercury, Inc.
Highland LM DBA Tyson LM
Hillsboro Ford-Mercury Sales, Inc.
Hood River Ford-Mercury, Inc.
Hub City Ford-Mercury, Inc.
Hunt County FLM, Inc., DBA Greenville FLM
Illini Lincoln-Mercury Sales, Inc.
Independence Ford, Inc.
Lake County Ford-Mercury, Inc.
Lakeland Ford Lincoln-Mercury, Inc.
Leader Motors Inc., DBA Leader L-M
Los Ramos Ford Lincoln-Mercury, Inc.
M&M Ford Lincoln-Mercury, Inc.
Marino Ford, Inc.
Marksville Ford Lincoln-Mercury, Inc.
McGehee Auto Plaza, Inc.
Metro Ford Automobile Sales, Inc.
Mon Valley Lincoln-Mercury, Inc.
Mountain Home Ford-Lincoln-Mercury, Inc.
Natchitoches Ford L-M Sales, Inc.
Noble Ford Lincoln-Mercury West, Inc.
Northhampton Ford, Inc.
Northwoods Ford-Lincoln-Mercury, Inc.
Osseo Ford, Inc.
Ottawa Ford Lincoln-Mercury, Inc.
Park Ford Sales, Inc.
Pavilion Lincoln-Mercury, Inc.

Pochelon Lincoln-Mercury, Inc.
Red Bluff Ford-Mercury, Inc.
Ripon Ford-Mercury, Inc.
River View Ford-Mercury, Inc.
Royal Lincoln-Mercury Sales, Inc.
Saginaw Ford DBA All American Ford
Shoals Ford, Inc.
Sonoma Ford, Inc., DBA Sonoma Ford-L-M
Spalding Ford Lincoln Mercury Sales, Inc.
Springfield Ford Lincoln-Mercury, Inc.
Suburban Ford Lincoln-Mercury, Inc.
Sun Valley Ford Lincoln-Mercury, Inc.
Sunbelt Ford-Mercury, Inc.
Team Ford, Inc.
Tower Ford Mercury, Inc.
Town & Country Lincoln-Mercury, Inc.
Tropical Ford, Inc.
Ukiah Ford-Lincoln Mercury, Inc.
Union City Ford Lincoln-Mercury, Inc.
Universal Ford Sales, Inc.
University Ford of Peoria, Inc.
Vandalia Ford Lincoln-Mercury, Inc.
Varsity Ford Lincoln-Mercury, Inc.
Verde Valley Ford Lincoln-Mercury, Inc.
Victory Ford, Inc.
Wellington Circle Motors, Inc.
West Covina Lincoln-Mercury, Inc.
Western Ford-Mercury, Inc.
Westwood Ford Lincoln-Mercury, Inc.
Yakima Valley LM DBA Sun City LM
32 Ford-Mercury, Inc.

TRUCK DEALERSHIPS

Atlantic Ford Truck Sales, Inc.
Bayou City Ford Trucks Sales, Inc.
Beltway Ford Truck Sales, Inc.
Bi-State Ford Truck Sales, Inc.
Bridge-Haven Ford Truck Sales, Inc.

Central Ford Truck Sales, Inc.
Crossroads Ford Truck Sales, Inc.
Delta Trucklease, Inc.
Golden State Ford Truck Sales, Inc.
Keystone Ford Truck Sales, Inc.
Lakeland Ford Truck Sales, Inc.
Mid-Cal Ford Truck Sales, Inc.
Mid-States Ford Truck Sales, Inc.
Miramar Ford Truck Sales, Inc.
Motor City Ford Truck, Inc.
Northside Ford Truck Sales, Inc.
River City Ford Truck Sales, Inc.
Sacramento Valley Ford Truck Sales, Inc.
Shamrock Ford Truck Sales, Inc.
Sooner State Ford Truck Sales, Inc.
Southside Ford Truck Sales, Inc.
Tri-State Ford Truck Sales, Inc.
Truck City Ford Sales, Inc.
West Gate Ford Truck Sales, Inc.